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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 12.01.2022

+ **W.P.(C) 15161/2021 & CM APPL. 47772/2021**
AXIS ENERGY VENTURES INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Saurabh Kirpal, Senior Adv. with
 Mr. Pankaj Mehta, Ms. Shweta Soni,
 Ms Tanima, Ms. Akansha Singh, Ms
 Mitali Takkar Advs.

versus

UNION OF INDIA Respondent

Through: Mr. Apoorva Kurup, CGSC

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J. (ORAL)**

1. We heard the matter on 12.01.2022, and dismissed the petition and the reasons were to be given later which are as follows:
2. The present petition has been filed by the petitioner seeking primarily the following relief:-

“i. Issue a writ order, or direction in the nature of mandamus or any other writ, thereby directing the Respondent to modify the financial qualification obligation contained in Clause 2.2.1 (a) and 2.2.3 (i) of the RFP dated 22.10.2021 to apply on the consortiums as a whole wherein the combined financial qualification of all the members of the consortium be considered for meeting the qualification criteria;”



3. The Petitioner is a private limited company with over a decade of presence in India and is a flagship company of Axis Energy Group.
4. Petitioner submits that the Axis Energy Group has executed over 1.2 GW of renewable projects with another 1.7 GW capacity of projects in various stages of implementation, and has extremely strong technical and project implementation capabilities. Axis Energy Group has entered into various strategic partnerships, consortiums and joint ventures and through these partnerships it is now at the forefront of India's movement to transition to sustainable clean energy, leveraging the generation, storage and transmission of solar, wind, hybrid and RTC renewable energy projects in India and abroad.
5. The Respondent is the Ministry of Heavy Industries and with the approval of the Cabinet of Ministers, vide a notification dated 09.06.2021 bearing number S.O. 2208(E), announced a Production Linked Incentive ("PLI") scheme for '*National Programme on Advanced Chemistry Cell (ACC) Battery Storage*' for the implementation of giga-scale ACC manufacturing facilities in India. The intent behind the said notification, as envisaged by the cabinet and recorded in the notification, is to incentivize potential investors to set-up giga scale ACC manufacturing facilities in India.
6. In furtherance of the said notification, the Respondent issued a Request for Proposal (RFP) on 22.10.2021 for selection of manufacturers for setting up manufacturing capacities for Advance Chemistry Cell (ACC) under the Production Linked Incentive (PLI) Scheme.
7. The RFP delineated the qualification criteria for bidders of various kinds, including consortiums. It is the condition for qualification



imposed upon consortiums or joint ventures, that has been challenged in the writ petition. As per the RFP, there is a requirement that the lead member of the consortium should satisfy the financial net worth requirement of Rs. 225,00,00,000/- (Rupees Two Hundred and Twenty-Five Crores) per Gigawatt hours or GWh, as per Clause 2.2.1(a) and 2.2.3(i) of the RFP.

8. The Petitioner submits that it intends to bid for the RFP as a joint venture with another eligible party, but is unable to satisfy the exorbitant financial qualification contained in the RFP, and more particularly, Clause 2.2.1(a) and 2.2.3(i). The petitioner submits that the only reasonable way to construe the financial net worth criteria/ requirement in the case of a joint venture, is to examine the joint or cumulative financial net worth of the members of the consortium, without insisting that the lead member alone satisfies the said criteria. It is submitted that the said Clauses are against the very objective and purpose of the RFP, and are arbitrary. It is submitted that the financial qualification criteria is contrary to the very meaning and intent of a joint venture and consortium, and has no reasonable nexus to the object and purpose of the governing notification.

9. The impugned clauses 2.2.1(a) and 2.2.3(i) are as follows:

“2.2.1 For determining the eligibility of Bidders for their shortlisting hereunder, the following shall apply:

(a) The Bidder for the purpose of shortlisting may be a sole firm/ single entity, AIF, Foreign Investment Fund or a group of entities (the “Consortium”), coming together to implement the Project. For the purpose of evaluation, in case of a Consortium, only the qualification criteria specified in Clause 2.2.3 of the Lead Member (as defined



hereinafter) shall be considered. However, no Bidder applying individually or as a Member of a Consortium, as the case may be, can be a member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.

2.2.3 To be eligible for short-listing, a Bidder shall fulfil the following conditions of eligibility:

Qualification Criteria:

Net Worth

(i) In case the Bidder is not an AIF or Foreign Investment Fund: The Bidder shall have a minimum Net Worth of INR 225,00,00,000 (Rupees two hundred and twenty-five crore) per GWh.”

(emphasis supplied)

10. The petitioner submitted a comprehensive bid query document on 30.11.2021 to the respondent, seeking correction of the so-called erroneous and incorrect condition imposed by the Respondent in the form of financial qualification criteria. The said query was responded on 17.12.2021 by the respondent, stating that the standard bid condition would prevail. The petitioner sent another representation dated 04.12.2021, which was not responded to by the respondent.
11. The Petitioner submits that the impugned clauses are an unreasonable bar to the petitioner and other similarly situated bidders, and restrict the petitioner from participating in the tender process, and are violative of Article 14 and 19(1)(g) of the Constitution of India.
12. When the matter came up for hearing on 24.12.2021, we issued notice to the respondent. On 03.01.2022, learned senior counsel for the petitioner stated that the petitioner would raise an additional ground regarding the requirement laid down under Clause 2.2.4 of the RFP,



requiring a certificate to be submitted, prepared according to the International Financial Reporting Standards (IFRS) from a reputed auditor, specifying the net worth of the bidder under Clause 2.2.3, as per format at Appendix-IV. It was submitted that this Clause is also restrictive, as Indian companies normally do not follow IFRS, and for any Indian company to transition to that system of accounting, – it would take about 4 to 6 months.

13. We permitted the petitioner to file an additional affidavit raising the aforesaid ground. We kept the matter for hearing on 12.01.2022, since we were informed that the last date for submission of the bids stood extended to 14.01.2022. We also directed the Respondents to file a Counter Affidavit responding to each and every submission of the Petitioner.
14. The respondent has filed a detailed counter affidavit, claiming that Clauses 2.2.1(a) and 2.2.3(i) of the RFP are fair, reasonable, rational and in consonance with the well-considered policy decision which was taken with the help of subject-matter experts.
15. The respondent states in the counter affidavit that the impugned clauses stipulate the criteria for selection of a consortium, that may bid for subsidy under the Production Linked Incentive (PLI) Scheme notified on 09.06.2021. The criteria for qualification of a consortium are based on the consideration that ACC battery manufacturing is a nascent/ 'greenfield' sector in India, which would require significant investment by the successful bidder over a sustained period of, at least, 7 years. Therefore, what is being tested by the impugned clause is the financial stability and viability of the bidding consortium (that it has the



financial potential and stamina to execute the project), and not the actual execution of the project for which the consortium would pool in the resources of its members.

16. It was submitted that the respondent designed the eligibility criteria to address the following 3 key aspects, namely:-

“(a) that the PLI Scheme is technology agnostic, whereby a consortium has the flexibility to change its composition depending on its technological requirements from time to time;

(b) that since a consortium will have to make a sizable investment, though with the flexibility to change its membership, the consortium must be financially stable which can only be ensured if the overall viability of the consortium is underpinned by a party that has the wherewithal to make such investments and a shareholding that provides 'significant influence' over the Special Purpose Vehicle (SPV) executing the project; and,

(c) that this one member should act as the 'face of the consortium' i.e. be the Lead Member so that the Government's dealings with the SPV are streamlined and simplified and the Government can minimize risks (e.g. those arising from any conflicts between the consortium's members) that may impact the implementation of the project.”

17. As regards clause 2.2.4(i), the respondents submit that the clause was included to ensure that both - domestic and international bidders have an equal opportunity to furnish the requisite financial statements, (in the event international bidders follow different accounting standards with varying time lines). An addendum dated 06.01.2022 has been issued, that allows bidders under the RFP to submit certificated accounts prepared according to the Indian Accounting Standards as well. Therefore, the challenge to clause 2.2.4(i), as recorded in our order dated 03.01.2022, does not survive for adjudication.



18. In respect of clauses 2.2.1(a) and 2.2.3(i), Mr. Kirpal, learned senior counsel for the petitioner has argued that the requirements under these clauses are contrary to the objective and principle of a consortium, because in a consortium, every consortium partner is required to pool in its resources. Mr. Kirpal submits that if the ‘lead member’ alone is required to satisfy the criteria of Net Worth of 225 crore per GW, then there is no purpose of permitting a consortium to make a bid. Since the minimum bid has to be for 5 GWh, the lead member of the consortium will be required to have Net Worth of (Rs. 225 crores x 5) Rs. 1125 crores, which is very large. Mr. Kirpal has placed heavy reliance on the decision of the Supreme Court in ***New Horizons Ltd. & Anr. vs. Union of India & Others*** [(1995), SCC 478], wherein the Supreme Court examined the nature of a joint venture, and the manner in which the qualification of a joint venture enterprise – which submits its bid, should be adjudged. He submits that in the light of the said decision, the insistence on the lead member of the JV – bidder having net worth of minimum Rs. 1125 crores is untenable. He relies on the following extract from this judgment:-

“23. Even if it be assumed that the requirement regarding experience as set out in the advertisement dated 22-4-1993 inviting tenders is a condition about eligibility for consideration of the tender, though we find no basis for the same, the said requirement regarding experience cannot be construed to mean that the said experience should be of the tenderer in his name only. It is possible to visualise a situation where a person having past experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name. That does not mean that the



earlier experience of one of the partners of the firm cannot be taken into consideration. Similarly, a company incorporated under the Companies Act having past experience may undergo reorganisation as a result of merger or amalgamation with another company which may have no such past experience and the tender is submitted in the name of the reorganised company. It could not be the purport of the requirement about experience that the experience of the company which has merged into the reorganised company cannot be taken into consideration because the tender has not been submitted in its name and has been submitted in the name of the reorganised company which does not have experience in its name. Conversely there may be a split in a company and persons looking after a particular field of the business of the company form a new company after leaving it. The new company, though having persons with experience in the field, has no experience in its name while the original company having experience in its name lacks persons with experience. The requirement regarding experience does not mean that the offer of the original company must be considered because it has experience in its name though it does not have experienced persons with it and ignore the offer of the new company because it does not have experience in its name though it has persons having experience in the field. While considering the requirement regarding experience it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the



work. He would go not by the name of the company but by the persons behind the company. While keeping in view the past experience he would also take note of the present state of affairs and the equipment and resources at the disposal of the company. The same has to be the approach of the authorities while considering a tender received in response to the advertisement issued on 22-4-1993. This would require that first the terms of the offer must be examined and if they are found satisfactory the next step would be to consider the credentials of the tenderer and his ability to perform the work to be entrusted. For judging the credentials past experience will have to be considered along with the present state of equipment and resources available with the tenderer. Past experience may not be of much help if the machinery and equipment is outdated. Conversely lack of experience may be made good by improved technology and better equipment. The advertisement dated 22-4-1993 when read with the notice for inviting tenders dated 26-4-1993 does not adoption of this course of If the Tender Evaluation Committee had adopted this approach and had examined the tender of NHL in this perspective it would have found that NHL, being a joint venture, has access to the benefit of the resources and strength of its parent/owning companies as well as to the experience in database management, sales and publishing of its parent group companies because after reorganisation of the Company in 1992 60% of the share capital of NHL is owned by Indian group of companies namely, TPI, LMI, WML. Etc. and Mr Aroon Purie and 40% of the share capital is owned by IPL a wholly-owned subsidiary of Singapore Telecom which was established in 1967 and is having long experience in publishing the Singapore telephone directory with yellow pages and other directories. Moreover in the tender it was specifically stated that IPL will be providing its unique integrated directory management system along with the expertise of its managers and that the managers will be actively involved in the project both out of Singapore and resident in India.



24. *The expression “joint venture” is more frequently used in the United States. It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty which may be altered by agreement, to share both in profit and losses. According to Words and Phrases, Permanent Edn., a joint venture is an association of two or more persons to carry out a single business enterprise for profit (p. 117, Vol. 23). A joint venture can take the form of a corporation wherein two or more persons or companies may join together. A joint venture corporation has been defined as a corporation which has joined with other individuals or corporations within the corporate framework in some specific undertaking commonly found in oil, chemicals, electronic, atomic fields. (Black’s Law Dictionary, 5th Edn., p. 342) Joint venture companies are now being increasingly formed in relation to projects requiring inflow of foreign capital or technical expertise in the fast developing countries in East Asia, viz., Japan, South Korea, Taiwan, China, etc. [See Jacques Buhart: Joint Ventures in East Asia Legal Issues (1991)]. There has been similar growth of joint ventures in our country wherein foreign companies join with Indian counterparts and contribute towards capital and technical know-how for the success of the venture. The High Court has taken note of this connotation of the expression “joint venture”. But the High Court has held that NHL is not a joint venture and that there is only a certain amount of equity participation by a foreign company in it. We are unable to agree with the said view of the High Court.”*

19. Mr. Kirpal submits that the RFP is tailor-made to suit certain parties, and exclude a large number of parties. He further submits that in the case of the petitioner, the consortium members are 3, with respective



net worth of Rs. 500, Rs. 500 and Rs. 700 crores, totalling to Rs. 1700 crores. He submits that it will be indeed ironical that a consortium with a lead member having net worth of Rs. 1125 crores - with other members having insignificant financial strength, would be permitted to participate, whereas the petitioner - whose combined financial strength/net worth would be Rs. 1700 crores, would be ousted as the lead member would not meet the bid criteria in Clause 2.2.1(a) and 2.2.3(i) of the RFP.

20. Mr. Kirpal submits that the principle laid by *Tata Cellular v. Union of India*, [(1994) 6 SCC 651], would not be applicable to the facts of the present case, and the present situation should be viewed in the context of Wednesbury's reasonableness.
21. *Per contra*, Mr. Apoorva Kurup, learned CGSC submits that the impugned policy is a well thought-of policy decision, which was taken in consultation with subject experts, by the tender floating authority, and their key interests and rationale has been explained below:

“(a) That the consortium should have the flexibility to change its composition so that it can facilitate the entry / exit of members depending on its technological requirements. This is because there are currently no operational ACC battery manufacturing facilities in India and, in such circumstances, a technical eligibility criterion, particularly in terms of prior experience, would be impractical and would have potentially led to the qualification of only foreign firms at the cost of domestic entities. Hence, the PLI Scheme for ACC battery manufacturing units is technology agnostic, i.e. there is no specified technical criteria and interested individuals / entities can partner with any technology provider to establish such manufacturing facilities. In other words, the impetus is currently on achieving self-sufficiency



in energy storage since the technology for ACC batteries is still globally evolving. For example, a consortium can bid with members that have expertise in Lithium-ion batteries but can later replace them with members with technical knowledge in the more advance battery technologies like Solid State Batteries, Aluminium Zinc Batteries, Sodium-ion Batteries, Flow Batteries etc. Such flexibility therefore allows the beneficiary firm/ project proponent to introduce technical improvements and the latest / cutting-edge technology from time to time.

- (b) That such flexibility must be accompanied with financial stability of the bidding consortium / beneficiary firm / project proponent, given that the subsidy is being provided to firms that must make significant investments in a nascent sector, and that too, over an extended period of at least seven (7) years. The Answering Respondent took a policy decision based on expert advice that such financial stability can only be ensured if the overall viability of the consortium is underpinned by a party that has the net-worth i.e. financial wherewithal to make such investments-a task that will involve borrowing money and infusing its own funds i.e. debt and equity contributions-and who correspondingly has a shareholding that provides 'significant influence' over the Special Purpose Vehicle ["SPV"] through which the project is executed. It is submitted that such emphasis on the financial stability of a consortium is a well-accepted norm in government tenders.*
- (c) That a model where a Lead Member of the consortium provides the financial strength and acts as the 'face of the consortium', while the consortium has the flexibility to change its composition depending on the technological expertise / knowhow of its members, would also streamline and simplify the Government's dealings with the beneficiary firm and ensure accountability in case of any intra-consortium conflict(s) that may impact project implementation. This is particularly important because the Government, which is disbursing public funds as subsidy, must be in a position to minimize risks (for e.g., that the*



project would not be successfully implemented, or that the consortium members may have conflicts, or that there may be inconsistent planning and execution by the consortium) by requiring a clearly identified member of the consortium to be the administrative and financial lynchpin of that arrangement.”

22. Mr. Kurup further submits that a huge amount of subsidy is to be granted by the Government and, therefore, the Government is interested in ensuring that the lead member - as the face of the consortium, must be one with deep pockets to maintain financial stability. The reason for the same is that the ‘Green Field’ industry is a nascent industry which requires a lot of investment to develop with a long gestation period. The financial eligibility criteria has been laid down to give comfort to the Government, specially, when the Government is required to give subsidy over a number of years.
23. It is also submitted that this rationale is reflected in other clauses of the tender as well. For instance, clause 2.2.3 of the RFP mandates the Lead Member to have an equity share of at least twenty-six percent (26%) in the SPV, which is significant as it empowers the Lead Member to exercise influence over the SPV, including by ensuring that matters requiring special resolutions under the Companies Act 2013 are not passed without its consent. In addition, clause 2.3 of the RFP allows a consortium to apply to the Government for changing its composition, only if the Lead Member continues as such in the consortium.
24. We have heard Mr. Saurabh Kirpal, learned Senior Advocate for the petitioner and Mr. Apoorva Kurup, learned CGSC for the respondent and have gone through the submission and the documents.

**ANALYSIS:-**

25. In our analysis, we are mainly concerned with the following question – *Whether there is a rationale/justification behind framing of clauses 2.2.1 (a) and 2.2.3 (i), or whether they are arbitrary, mala fide, irrationale or hit by Wednesbury’s principle of unreasonableness with the sole purpose of favouring certain bidders?*
26. Mr. Kirpal submits that the RFP is not a tender in the strict sense, but a subsidy scheme, and hence, the principle of Restricted and Limited judicial scrutiny of Tender Conditions will not apply. We are unable to agree with the same. In the present case, the respondent Union of India is inviting bids, with the intention ‘*to develop greenfield giga-scale advance cell manufacturing for various end use applications and promotion of diverse energy sources, to ensure overall energy security for the nation in the long run*’. Though it may not be a tender in the strict sense, but has all the trappings of a tender, namely:
- i. Work or services are required from the tenderer;
 - ii. Reserve price would be fixed for rendering those services;
 - iii. It clearly defines scope of work to be completed within a fixed time frame.
 - iv. The endeavour is to allow maximum participation within well-defined parameters of the RFP, to award the work to the most competitive and suitable bidder.
27. Hence, in our opinion the RFP in question is akin to a tender, and hence, the principle of ‘Restricted and Limited judicial scrutiny of Tender Conditions’ will apply. We are not to sit in the armchair of the



tender floating authority and decide its requirement. The tender floating authority is the best person to understand its requirement and frame tender conditions accordingly. The Court would not interfere with the tender conditions, or question the wisdom of the tender floating authority in laying down the tender conditions, unless they are clearly arbitrary, discriminatory, tailor-made to suit only a particular bidder, or suffer from unreasonableness.

28. The scope of our interference is clearly set out in the following judgments:-

a) The Supreme Court in ***Directorate of Education v. Educomp Datamatics Ltd.***¹, held as follows:

“11. This principle was again restated by this Court in Monarch Infrastructure (P) Ltd. v. Commr., Ulhasnagar Municipal Corpn. [(2000) 5 SCC 287] It was held that the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the courts to say whether the conditions prescribed in the tender under consideration were better than the ones prescribed in the earlier tender invitations.

12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary,



discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.”

(emphasis supplied)

- b) The tender floating authority is the best judge of its requirements and the best judge to interpret its tender conditions. The same has been observed by the Supreme Court in *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. & Anr.*² wherein it has been held:-

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.”

(emphasis supplied)

29. What we have to examine is whether the justification for imposing the qualification conditions as contained in clauses 2.2.1(a) and 2.2.3(i) are reasonable; have a sound basis, and; are not hit by Wednesbury

¹ (2004) 4 SCC 19.

² (2016) 16 SCC 818.



Principles of unreasonableness. The rationale and purpose behind imposing clauses 2.2.1(a) and 2.2.3(i) is financial stability and comfort to the tender floating authority, specially when it is looking to development of an industry which is at its nascent stage. The financial stability of the bidder is required by the tender floating authority, since the government would be disbursing public funds as subsidies over a number of years to ensure steady development of ACC battery manufacturing units. The lead member is required to have the financial strength, as the lead member will have to be the face of the consortium, and would be ensuring accountability and continuity. The project is capital intensive with a long gestation period, and a JV bidder, whose lead member does not meet the financial capacity/ strength criteria, may not be able to sustain its continued support and funding for the project over the years. Much is at stake for the government as it is seeking development of the new technology in National interest. The issue is not merely of the financial commitment of the government, but also of not losing the opportunity cost, lest the bidder fails to successfully implement the project. No unreasonableness and *malafides* can be found with the logic that the Respondent wants to minimize its risks to ensure that the project is successfully implemented. The rationale and purposes of the aforementioned clauses show that it is not arbitrary, unreasonable, mala fide or irrational and the reasoning finds its footing on public interest, i.e. ensuring the security of public money.

30. In addition, during the hearing, Mr. Sujit Jena from NITI Ayog also joined the proceedings and stated that before finalising the bid, the draft model bid document was put on the government portal for inviting



stakeholders' consultation. The document was uploaded on NITI Ayog website, and all stakeholders were required to provide their written comment, if any, by or before 14.12.2020. The said statement also finds mention in the counter affidavit, wherein it has been stated on oath:

“12. That, accordingly, the RFP issued on 22.10.2021 was designed to select only those individuals/ entities which actually have the ability to make such sizable investments. It is pertinent to note that since manufacturing of ACC batteries is a nascent sector in India, there were several rounds of deliberations with stakeholders through workshops and industry interactions. Thereafter, a model tender document was also shared in the public domain on 11.11.2020 to seek feedback from stakeholders which stipulated the same eligibility criteria for the Lead Member of a consortium, as is being impugned in the instant petition, considering that it is a 'greenfield' project, unlike manufacturing projects in the Solar PV industry, which is already developed, and such projects are therefore 'brownfield' projects. Consequently, as part of said eligibility criteria, the RFP required parties which bid as consortiums to designate a Lead Member who has a minimum net-worth of INR 225 crores per GWh (in case the bidder is not an Alternative Investment Fund or Foreign Investment Fund).”

31. The respondent states that after putting the draft RFP in public domain, suggestions and objectives were received from the stakeholders which were considered and duly acted upon.
32. The respondents have also filed the following chart showing the bidders who have submitted their bid, highlighting that the RFP has received a good response:-



Receipt of Cost of RFP Process (INR 4,50,000/-)

#	Company	Date of receipt of INR 4,50,000/-	#	Company	Date of receipt of INR 4,50,000/-
1	NSURE Reliable Power Solutions Pvt. Ltd.	04-11-2021	9	Charge CCCV, USA (C4V) [Fee paid by Mr. Kuldeep Gupta]	10-11-2021
2	Bharat Heavy Electricals Ltd. (BHEL)	09-11-2021	10	Renew Wind Energy Jath 3 Pvt. Ltd.	10-11-2021
3	Exide Leclanche Energy Pvt. Ltd. (ELEPL) [Fee paid by Exide Industries Ltd.]	09-11-2021	11	OLA Electric Mobility Pvt. Ltd.	10-11-2021
4	Larsen & Toubro Ltd. (L& T)	09-11-2021	12	India Power Corporation Ltd.	11-11-2021
5	Livguard Batteries Pvt. Ltd.	09-11-2021	13	Tata Chemicals Ltd.	11-11-2021
6	Amara Raja Batteries Ltd. (ARBL)	09-11-2021	14	Mundra Solar PV Ltd.	12-11-2021
7	Reliance Industries Ltd. (RIL)	10-11-2021	15	Hyunet Private Ltd.	23-12-2021
8	Lucas TVS Ltd.	10-11-2021	16	Rajesh Exports Ltd.	27-12-2021

33. Hence, we are of the view that Clause 2.2.1(a) and Clause 2.2.3(i) are well-reasoned, have a sound basis, and are well-thought of by the tender floating authority. The rationale is enunciated in the counter affidavit, and we find no reason to not accept the same. The tender floating authority has also, for sufficiently long period of time, kept these conditions in public domain for inviting objections and has considered the same. There may be many ways to draft tender conditions, and it may be that they could have achieved the same objective with other terms and conditions, but that exercise is not for this Court to undertake as we do not write tender conditions. The formulation of tender conditions is a specialised exercise which require



Specialists in their field, and as per *Afcons (supra)*, the tender floating authority is the best judge of its requirements. Therefore, while undertaking judicial scrutiny, all that we have to see is whether the conditions are arbitrary, irrational, biased, *mala fide* or hit by Wednesbury principle of unreasonableness.

34. We are of the view that the clauses are neither of the aforesaid, and hence, see no reason to interfere in the same.
35. Reliance placed on *New Horizons Ltd.* (Supra) is misplaced, as, in that case the Supreme Court was dealing with the aspect of past experience requirement that the bidder had to fulfil, and not the financial capacity requirement as in the present case. Secondly, in that case, the Supreme Court found that the advertisement “*when read with the notice for inviting tenders dated 26-4-1993 does not preclude adoption of this course of action.*” The Supreme Court found nothing in the tender conditions to contra-indicate against the clubbing of the past experience of the joint venture partners. However, the situation is just to the contrary in the present case. The tender conditions aforesaid do not permit the aggregation of the net worth of the members of the JV-bidder. Thus, the decision in *New Horizon Ltd.* (Supra) is of no avail to the petitioner.
36. Consequently, and for the reasons stated above, the writ petition is dismissed.

JASMEET SINGH, J

VIPIN SANGHI, J

JANUARY 12, 2022/ ‘ms’